(20,720.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 318.

THE STEAM TUG "EUGENE F. MORAN," MICHAEL MORAN, CLAIMANT, AND THE SCOWS "15 D" AND "18 D," THE HENRY DUBOIS SONS CO., CLAIMANT,

vs.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AND THE STEAM TUG "CHARLES D. MATTHEWS," JOHN D. DAILY ET AL., CLAIMANTS.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the second circuit	1	1
Statement of facts	1	1
Question certified	2	2
Judges' certificate	3	2
Clerk's certificate	4	2

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 30, 1908.

1 United States Circuit Court of Appeals, Second Circuit.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Libellant-Appellee,

vs.

THE STEAMTUG "CHARLES D. MATTHEWS"—JOHN D. DAILY and Ano., Claimants-Appellees; THE STEAMTUG "EUGENE F. MORAN"—MICHAEL MORAN, Claimant-Appellant, and THE SCOWS "15 D" and "18 D"—THE HENRY DUBOIS SONS CO., Claimant-Appellant.

This cause comes here upon appeals from a decree of the District court, Southern District of New York in favor of the libellant for full damages against the four vessels named in the title in equal proportions against each. The suit was brought *in rem* to recover damages resulting from a collision, and numerous assignments of error were presented and considered by this court and conclusion reached thereon. Upon one point, however, viz: in what proportions the several offending vessels shall be required to contribute to pay the damages, this court desires instruction before finally disposing of the cause and therefore elects to certify that question to the Supreme Court.

Statement of Facts.

About 7.30 P. M. of February 1, 1905, libellant's car float was proceeding up the Hudson River in tow of the tug "Matthews." A single employee of libellant was on board, coiling up lines and getting the float ready for dock, and an employee of the tug was standing on top of the cars keeping lookout. No employee of the libellant participated in any way in the navigation of these
2 two vessels, which was conducted solely by the master of the tug. While thus proceeding they encountered the tug "Moran" which was towing two mud scows out of a slip and down river to the dumping grounds. Scow 15 D was immediately behind the "Moran," on a hawser, and behind 15 D, on another hawser came Scow 18 D. Both scows were owned by the Henry Dubois Sons Co. Collision ensued between the car float and scow 15 D. The car float was not guilty of any fault in her own management, unless, contrary to the decision in Sturgis *v.* Boyer (24 How. 110) she should be held responsible for the faults of the tug which her owner had hired to move her from place to place in the harbor. The tug Matthews was guilty of faults of navigation which contributed to the accident. Neither the scow 15 D nor the Scow 18 D displayed the lights required by the rules of navigation. There was an employee of the owner in charge of each scow and it was their duty as well as the duty of the master of the tug to have the lights put up. Both scows therefore and the "Moran" were guilty of a common fault contributing to the accident. Besides the "Moran" was guilty of other faults of navigation, also contributing to the accident.

Question Certified.

Upon the facts above set forth the question of law arising upon which this court desires the instruction of the Supreme Court is: "In what proportions shall the damages sustained by the car float be assessed upon the offending vessels."

In accordance with the provisions of Section 6 of the Act of March 31, 1891, establishing courts of Appeal etc., the foregoing question of law is by the Circuit Court of Appeals for the
3 Second Circuit hereby certified to the Supreme Court.

April 30, 1907.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
WM. K. TOWNSEND,
Circuit Judge.

4 United States Circuit Court of Appeals, Second Circuit.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate was filed and entered of record in my office on the 30th day of April 1907, and by direction of the Judges of the said Court, said certificate is forwarded to the Supreme Court of the United States.

Dated New York, May 2nd, 1907.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

5 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. The New York Central & Hudson River R. R. Co., Lib'l't-Appellee, *vs.* The Steamtug "Charles D. Matthews," John D. Daily and ano., Cl'm't-Appellees, and others. Certificate. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 30, 1907. William Parkin, clerk.

Endorsed on cover: File No. 20,720. U. S. circuit court appeals, 2d circuit. Term No. 318. The Steam Tug "Eugene F. Moran," Michael Moran, claimant, and The Scows "15 D" and "18 D," The Henry Dubois Sons Co., claimant, *vs.* The New York Central & Hudson River Railroad Company, and The Steam Tug "Charles D. Matthews," John D. Daily *et al.*, claimants. (Certificate.) Filed May 16th, 1907. File No. 20,720.